

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 18-003-15-1-4-01564-16
Petitioner: Sukhwinder Singh
Respondent: Delaware County Assessor
Parcel: 18-11-04-455-001.000-003
Assessment Year: 2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Sukhwinder Singh (“Petitioner”) filed his appeal with the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”), which issued notice of its determination on June 13, 2016. The Petitioner then filed a Form 131 petition with the Board, electing to have the appeal heard under the Board’s small claims procedures. The Respondent did not elect to have the appeal removed from those procedures.
2. Jennifer Bippus, the Board’s Administrative Law Judge (“ALJ”), held a hearing on December 14, 2016. Neither the ALJ nor the Board inspected the property.
3. Sukhwinder Singh and Michael Lady, appraiser, were sworn as witnesses for the Petitioner. Charles Ward and Christopher Ward were sworn as witnesses for the Respondent.

Facts

4. The subject property is a convenience mart/gas station located at 1634 N. Wheeling Avenue in Muncie.¹
5. For 2015, the PTABOA determined the land to be \$511,400 and the improvements \$281,400 for a total of \$792,800.

Record

6. The official record contains the following:

¹ During the course of the hearing, the property address was designated as 1630 N. Wheeling, 1634 N. Wheeling, and 1638 N. Wheeling. The property record card and the Form 115 show the address as 1634 N. Wheeling.

Exhibits:

Petitioner's Exhibit 1:	Appraisal of the subject property land by Michael Lady
Respondent's Exhibit 5:	Comparable sales analysis
Respondent's Exhibit 6:	Recorded mortgage

The record also includes: (1) a digital recording of the hearing, (2) all pleadings and documents filed in the current appeals, and (3) all orders and notices issued by the Board.

Objections

7. The Petitioner's witness, Michael Lady, objected to Respondent's Ex. 6, the recorded mortgage. He argued that it was irrelevant because the mortgage was for the entire business, not just the real property. We first note that Mr. Lady was appearing only as a witness, and was not entitled to object to evidence. However, because the Petitioner appears to have acquiesced to this objection, we will address it. While it may be true that the mortgage is on the entire business, it still has some relevance to the value of the real property. Therefore, we admit Respondent's Ex. 6 over the objection.

Burden

8. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15-17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b). The assessment increased less than 5% from 2014 to 2015. Therefore, the Petitioner has the burden of proof.

Summary of Parties' Contentions

9. Petitioner's case:
 - a. The Petitioner contends that the land is over-assessed based on an appraisal prepared by Michael C. Lady, certified general appraiser. Lady prepared the appraisal in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP") and estimated the value of the land at \$240,000 as of March 1, 2015. The

Petitioner is not appealing the value of the improvements. *Lady testimony; Pet'r Ex. 1.*

- b. Lady argued that it was legally permissible to appeal just the land value of an assessment. He justified this by stating that he examined the manual, talked to experts and attorneys, and found case law supporting this position. He further argued that valuing land as a separate component was a standard part of the cost approach to value. *Lady testimony.*
- c. Lady based his valuation on the sales comparison approach to value. He presented six comparable properties from Muncie that sold between August 2010 and November 2015.
 - Comparable #1, 2601 W. Jackson, a 21,000 square foot parcel, sold in November 2015, for \$125,000 or \$5.95 per square foot of building area. It was a corner lot that sold at auction. Lady considered this property inferior in location and access/exposure to the subject property. He also made a positive adjustment for size. After adjustments for differences, the adjusted price per square foot was \$7.74.
 - Comparable #2, 1411 E. 29th Street, 78,626 square feet, sold in October 2013 for \$300,000 or \$3.82 per square foot. Lady noted that the buyer intended to divide the property to exclude a portion of the land containing underground storage tanks related to another parcel. After adjusting for inferior location and access/exposure, the adjusted value per square foot was \$6.30.
 - Comparable #3, 909 W. McGalliard, was 21,240 square feet. It sold in September 2011 for \$340,000 or \$16.01 per square foot. The property was improved with a Taco Bell that was later demolished. He considered the property to have superior location and access/exposure than the subject property. The adjusted price per square foot was \$10.40.
 - Comparable #4, 3200 N. Grandville, 17,860 square feet, sold in June 2012 for \$275,000 or \$15.40 per square foot. It was improved with a small commercial building that was subsequently demolished. Lady found this property also had a superior location and superior access/exposure compared to the subject property. The adjusted price per square foot was \$9.24.
 - Comparable #5, 3700 S. Chandler, 34,195 square feet, sold in August 2010 for \$200,000 or \$5.85 per square foot. This property was inferior to the subject property in location and access/location. The adjusted price per square foot was \$8.19.
 - Comparable #6, 1312 W. McGalliard, 40,293 square feet, represents an assemblage of lots purchased by Culver's Muncie, LLC. Some of these lots

included improvements that were demolished. After combining the sales and adjusting for superior location and access/exposure, Lady concluded to an adjusted price per square foot of \$9.03.

- d. Lady made no adjustments to the comparable properties for time of sale because he believed there was no change in the market. He reconciled the adjusted sale prices to \$8.50 per square foot, for a rounded total of \$240,000 for the subject land. *Lady testimony; Pet'r Ex. 1.*
 - e. Lady admitted that, while some of the sale properties required demolition, he was unable to verify what the demolition costs were, and made no adjustments for those costs. *Lady testimony.*
 - f. He also reported a sale of a property next door to the subject property. That property sold in August 2015 for \$140,000. When factoring in \$30,000 in demolition costs, it sold for \$2.60 per square foot. *Lady testimony; Pet'r Ex. 1.*
10. Respondent's case:
- a. The Respondent contended that there were several problems with the Petitioner's appraisal of the subject property, including:
 - Comparable sale #1 was unreliable because it sold at auction.
 - Comparable sale #2 was unreliable because it was a land contract, which is not considered a valid sale for assessment purposes.
 - Comparable sales #3, #4, and #6 all required demolition of buildings but Lady failed to make any adjustments for this fact.
 - Comparable sale #5 sold in August 2010, but Lady made no adjustment for time, nor did he support his contention that no adjustment was necessary with reliable data, such as a paired sales analysis. *Christopher Ward testimony; Pet'r Ex. 1.*
 - b. The Respondent also argued that, while land and improvements are frequently valued separately, according to the International Association of Assessing Officials ("IAAO"), the final analysis for an improved property must be as a unit with the highest and best use for both. *Charles Ward testimony.*
 - c. The Respondent also argued that the entire assessment of the property was correct. In support of this point, Christopher Ward prepared a sales comparison grid:
 - Comparable #1, 15150 W. Commerce Drive, sold on December 5, 2014 for \$930,000. This building and lot are slightly larger than the subject property and it

also has a car wash. It has 300 feet of frontage and is 17 miles from the subject property.

- Comparable #2, 1401 E. 29th Street, sold on October 21, 2014 for \$1,350,000. The building and lot are larger than the subject property. It has 265 feet of frontage and is 4.3 miles from the subject property.
- Comparable #3, 300 E. McGalliard Road, sold on October 6, 2014 for \$1.1 million. The building is 1,760 square feet and the lot is 24,200 square feet. It has 200 feet of frontage and is about 1.7 miles from the subject property.

Christopher Ward testimony; Resp't Ex. 5.

- d. The average sale price per square foot was \$400.34 and the median price per square foot was \$378.79. Both of those are above the subject property's total assessment of \$340 per square foot. No adjustments were made to the comparable properties.
Christopher Ward testimony; Resp't Ex. 5.
- e. The Respondent also presented a copy of a recorded mortgage that states "The lien of this Mortgage shall not exceed at any one time \$970,000."² *Christopher Ward testimony; Resp't Ex. 6.*

ANALYSIS

11. The Petitioner failed to establish a prima facie case for a reduction in the assessed value. The Board reached this decision for the following reasons:
 - a. Real property is assessed based on its "true tax value", which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
 - b. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant

² In response to this evidence, the Petitioner testified to various facts about the development of the property and his eventual purchase. *Singh testimony.*

valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2013 assessment was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

- c. The Respondent argued that a taxpayer cannot appeal only the land portion of an assessment. This is incorrect, under some circumstances a taxpayer may challenge one component of the assessment. To succeed, the taxpayer must present reliable evidence of that component. In this case, we find Lady's appraisal too problematic to be reliable.
- d. Lady stated that he valued the subject property as if vacant and ready for improvement. He failed to further define these terms. This failure presents a problem, because for commercially developed land, the land portion of the assessment represents not just the land itself, but also certain site improvements. These include sewer, water, gas, septic, grading, and landscaping. *See* 2011 Real Property Assessment Guidelines. Ch. 2 at 66. While Lady indicated that the subject land had at least some of these components, he failed to show that the purportedly comparable properties had similar site improvements.³ Furthermore, it is not apparent from Lady's testimony or appraisal that he even considered site improvements as part of his valuation. If he did not, then accepting his conclusions for the land would distort the overall value of the property by omitting certain components from assessment.
- e. During cross-examination, Lady also admitted that he did not adjust for demolition costs for several of his comparable properties. This error affects both Lady's conclusion as well as his overall credibility.
- f. Finally, we note that Lady, while purporting to appear as an independent witness, was also acting as an advocate. He objected to one of the Respondent's Exhibits, offered argument about that evidence, and was apparently responsible for the Petitioner's decision to pursue a land-only appeal strategy. By stepping well outside the bounds of a typical expert witness, Lady casts doubt on his own independence.

CONCLUSION

12. The Petitioner's case has several serious problems. The Petitioner chose to appeal only the land assessment. However, it appears that Lady may not have valued all of the components that were included in the original assessment. In addition, he failed to adjust for demolition costs. Finally, because Lady acted both as an advocate and as a witness, we have serious doubts about his credibility as an independent expert. For these reasons,

³It could be inferred that some of the purportedly comparable properties had site improvements because they contained buildings that were demolished. However, such an inference is not reliable evidence, particularly when unaccompanied by any meaningful analysis.

we find Lady's opinion unreliable. The Petitioner failed to make a prima facie case for any reduction in the assessment.

13. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E. 2d 1215, 1221-22 (Ind. Tax Ct. 2003). Thus, we need not analyze the Respondent's additional evidence.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board orders no change to the assessment.

ISSUED: March 14, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.